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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No.: CR 14 0196 CRB
v.)
KWOK CHEUNG CHOW, et al.,) UNITED STATES' FIRST PROPOSED JURY
Defendants.) INSTRUCTIONS
)
) Date: November 2, 2015
) Time: 8:30 a.m.
) Court: Honorable Charles R. Breyer
)
)

1 **1.1 DUTY OF JURY**

2 Jurors: You now are the jury in this case, and I want to take a few minutes to tell you
3 something about your duties as jurors and to give you some preliminary instructions. At the end
4 of the trial I will give you more detailed [written] instructions that will control your
deliberations.

5 When you deliberate, it will be your duty to weigh and to evaluate all the evidence
6 received in the case and, in that process, to decide the facts. To the facts as you find them, you
7 will apply the law as I give it to you, whether you agree with the law or not. You must decide the
8 case solely on the evidence and the law before you and must not be influenced by any personal
likes or dislikes, opinions, prejudices, or sympathy. Please do not take anything I may say or do
during the trial as indicating what I think of the evidence or what your verdict should be—that is
entirely up to you.

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1 **1.2 THE CHARGE—PRESUMPTION OF INNOCENCE**

2 This is a criminal case brought by the United States government. The government
3 charges the defendant with [*specify crime[s] charged*]. The charge[s] against the defendant [is]
4 [are] contained in the indictment. The indictment simply describes the charge[s] the government
brings against the defendant. The indictment is not evidence and does not prove anything.

5 The defendant has pleaded not guilty to the charge[s] and is presumed innocent unless
6 and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the
7 defendant has the right to remain silent and never has to prove innocence or to present any
evidence.

8 [In order to help you follow the evidence, I will now give you a brief summary of the
9 elements of the crime[s] which the government must prove to make its case: [*supply brief*
statement of elements of crime[s]].]

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1 **1.3 WHAT IS EVIDENCE**

2 The evidence you are to consider in deciding what the facts are consists of:

3 (1) the sworn testimony of any witness; [and]

4 (2) the exhibits which are received in evidence[.] [; and]

4 (3) any facts to which the parties agree.]

1 **1.4 WHAT IS NOT EVIDENCE**

2 The following things are *not* evidence, and you must not consider them as evidence in
3 deciding the facts of this case:

4 (1) statements and arguments of the attorneys;

5 (2) questions and objections of the attorneys;

6 (3) testimony that I instruct you to disregard; and

7 (4) anything you may see or hear when the court is not in session even if what you see or
8 hear is done or said by one of the parties or by one of the witnesses.

1 **1.5 DIRECT AND CIRCUMSTANTIAL EVIDENCE**

2 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
3 as testimony by a witness about what that witness personally saw or heard or did. Circumstantial
4 evidence is indirect evidence, that is, it is proof of one or more facts from which one can find
another fact.

5 You are to consider both direct and circumstantial evidence. Either can be used to prove
6 any fact. The law makes no distinction between the weight to be given to either direct or
circumstantial evidence. It is for you to decide how much weight to give to any evidence.

1 **1.6 RULING ON OBJECTIONS**

2 There are rules of evidence that control what can be received in evidence. When a lawyer
3 asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not
4 permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the
5 question may be answered or the exhibit received. If I sustain the objection, the question cannot
6 be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question,
7 you must ignore the question and must not guess what the answer would have been.

8 Sometimes I may order that evidence be stricken from the record and that you disregard
9 or ignore the evidence. That means that when you are deciding the case, you must not consider
10 the evidence that I told you to disregard.

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1 **1.7 CREDIBILITY OF WITNESSES**

2 In deciding the facts in this case, you may have to decide which testimony to believe and
3 which testimony not to believe. You may believe everything a witness says, or part of it, or none
4 of it.

5 In considering the testimony of any witness, you may take into account:

6 (1) the witness's opportunity and ability to see or hear or know the things testified to;
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8 (2) the witness's memory;
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10 (3) the witness's manner while testifying;
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12 (4) the witness's interest in the outcome of the case, if any;
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14 (5) the witness's bias or prejudice, if any;
15 (6) whether other evidence contradicted the witness's testimony;
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17 (7) the reasonableness of the witness's testimony in light of all the evidence; and
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19 (8) any other factors that bear on believability.

20 The weight of the evidence as to a fact does not necessarily depend on the number of
21 witnesses who testify about it.

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1 **1.8 CONDUCT OF THE JURY**

2 I will now say a few words about your conduct as jurors.

3 First, keep an open mind throughout the trial, and do not decide what the verdict should
4 be until you and your fellow jurors have completed your deliberations at the end of the case.

5 Second, because you must decide this case based only on the evidence received in the
6 case and on my instructions as to the law that applies, you must not be exposed to any other
7 information about the case or to the issues it involves during the course of your jury duty. Thus,
7 until the end of the case or unless I tell you otherwise:

8 Do not communicate with anyone in any way and do not let anyone else communicate
9 with you in any way about the merits of the case or anything to do with it. This includes
10 discussing the case in person, in writing, by phone or electronic means, via email, text
11 messaging, or any Internet chat room, blog, website or other feature. This applies to
12 communicating with your fellow jurors until I give you the case for deliberation, and it
13 applies to communicating with everyone else including your family members, your
14 employer, the media or press, and the people involved in the trial, although you may
15 notify your family and your employer that you have been seated as a juror in the case.

16 But, if you are asked or approached in any way about your jury service or anything about
17 this case, you must respond that you have been ordered not to discuss the matter and to
18 report the contact to the court.

19 Because you will receive all the evidence and legal instruction you properly may consider
20 to return a verdict: do not read, watch, or listen to any news or media accounts or
21 commentary about the case or anything to do with it; do not do any research, such as
22 consulting dictionaries, searching the Internet or using other reference materials; and do
23 not make any investigation or in any other way try to learn about the case on your own.

24 The law requires these restrictions to ensure the parties have a fair trial based on the same
25 evidence that each party has had an opportunity to address. A juror who violates these
26 restrictions jeopardizes the fairness of these proceedings[, and a mistrial could result that would
27 require the entire trial process to start over]. If any juror is exposed to any outside information,
28 please notify the court immediately.

1 **1.9 NO TRANSCRIPT AVAILABLE TO JURY**

2 At the end of the trial you will have to make your decision based on what you recall of
3 the evidence. You will not have a written transcript of the trial. I urge you to pay close attention
4 to the testimony as it is given.

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1 **1.10 TAKING NOTES**

2 If you wish, you may take notes to help you remember the evidence. If you do take notes,
3 please keep them to yourself until you and your fellow jurors go to the jury room to decide the
4 case. Do not let note-taking distract you from being attentive. When you leave court for recesses,
5 your notes should be left in the [courtroom] [jury room] [envelope in the jury room]. No one will
6 read your notes.

7 Whether or not you take notes, you should rely on your own memory of the evidence.
8 Notes are only to assist your memory. You should not be overly influenced by your notes or
9 those of your fellow jurors.

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1 **1.11 OUTLINE OF TRIAL**

2 The next phase of the trial will now begin. First, each side may make an opening
3 statement. An opening statement is not evidence. It is simply an outline to help you understand
4 what that party expects the evidence will show. A party is not required to make an opening
statement.

5 The government will then present evidence and counsel for the defendant may cross-
6 examine. Then, if the defendant chooses to offer evidence, counsel for the government may
cross-examine.

7 After the evidence has been presented, [I will instruct you on the law that applies to the
8 case and the attorneys will make closing arguments] [the attorneys will make closing arguments
and I will instruct you on the law that applies to the case].

9 After that, you will go to the jury room to deliberate on your verdict.

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1 **1.12 JURY TO BE GUIDED BY OFFICIAL ENGLISH
2 TRANSLATION/INTERPRETATION**

3 [A language] [Languages] other than English will be used for some evidence during this
4 trial. [When a witness testifies in another language, the witness will do so through an official
5 court interpreter.] [When recorded evidence is presented in another language, there will be an
6 official court translation of the recording.]

7 The evidence you are to consider and on which you must base your decision is only the
8 English-language [interpretation] [translation] provided through the official court [interpreters]
9 [translators]. Although some of you may know the non-English language used, you must
10 disregard any meaning of the non-English words that differs from the official [interpretation]
11 [translation].

12 [You must not make any assumptions about a witness or a party based solely upon the
13 use of an interpreter to assist that witness or party.]

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1 **INSTRUCTIONS AT THE CONCLUSION OF THE CASE**

2 **3.1 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

3 Members of the jury, now that you have heard all the evidence, it is my duty to instruct
4 you on the law that applies to this case. A copy of these instructions will be available in the jury
room for you to consult.

5 It is your duty to weigh and to evaluate all the evidence received in the case and, in that
6 process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as
7 you find them, whether you agree with the law or not. You must decide the case solely on the
evidence and the law and must not be influenced by any personal likes or dislikes, opinions,
8 prejudices, or sympathy. You will recall that you took an oath promising to do so at the
beginning of the case.

9 You must follow all these instructions and not single out some and ignore others; they are
10 all important. Please do not read into these instructions or into anything I may have said or done
11 any suggestion as to what verdict you should return—that is a matter entirely up to you.

1 **3.2 CHARGE AGAINST DEFENDANT NOT EVIDENCE—PRESUMPTION OF**
2 **INNOCENCE—BURDEN OF PROOF**

3 The indictment is not evidence. The defendant has pleaded not guilty to the charges. The
4 defendant is presumed to be innocent unless and until the government proves the defendant
5 guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present
any evidence to prove innocence. The government has the burden of proving every element of
the charges beyond a reasonable doubt.

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1 **3.3 DEFENDANT'S DECISION NOT TO TESTIFY**

2 A defendant in a criminal case has a constitutional right not to testify. You may not draw
3 any inference of any kind from the fact that the defendant did not testify.

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1 **3.4 DEFENDANT'S DECISION TO TESTIFY**

2 The defendant has testified. You should treat this testimony just as you would the
3 testimony of any other witness.

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1 **3.5 REASONABLE DOUBT—DEFINED**

2 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant
3 is guilty. It is not required that the government prove guilt beyond all possible doubt.

4 A reasonable doubt is a doubt based upon reason and common sense and is not based
5 purely on speculation. It may arise from a careful and impartial consideration of all the evidence,
6 or from lack of evidence.

7 If after a careful and impartial consideration of all the evidence, you are not convinced
8 beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not
9 guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you
10 are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the
11 defendant guilty.

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1 **3.6 WHAT IS EVIDENCE**

2 The evidence you are to consider in deciding what the facts are consists of:

3 (1) the sworn testimony of any witness; [and]

4 (2) the exhibits received in evidence[.] [; and]

5 [(3) any facts to which the parties have agreed.]

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1 **3.7 WHAT IS NOT EVIDENCE**

2 In reaching your verdict you may consider only the testimony and exhibits received in
3 evidence. The following things are not evidence and you may not consider them in deciding what
4 the facts are:

5 1. Questions, statements, objections, and arguments by the lawyers are not evidence.
6 The lawyers are not witnesses. Although you must consider a lawyer's questions to
7 understand the answers of a witness, the lawyer's questions are not evidence. Similarly,
8 what the lawyers have said in their opening statements, [will say in their] closing
9 arguments and at other times is intended to help you interpret the evidence, but it is not
10 evidence. If the facts as you remember them differ from the way the lawyers state them,
11 your memory of them controls.

12 2. Any testimony that I have excluded, stricken, or instructed you to disregard is not
13 evidence. [In addition, some evidence was received only for a limited purpose; when I
14 have instructed you to consider certain evidence in a limited way, you must do so.]

15 3. Anything you may have seen or heard when the court was not in session is not
16 evidence. You are to decide the case solely on the evidence received at the trial.

1 **3.8 DIRECT AND CIRCUMSTANTIAL EVIDENCE**

2 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
3 as testimony by a witness about what that witness personally saw or heard or did. Circumstantial
4 evidence is indirect evidence, that is, it is proof of one or more facts from which you can find
another fact.

5 You are to consider both direct and circumstantial evidence. Either can be used to prove
6 any fact. The law makes no distinction between the weight to be given to either direct or
circumstantial evidence. It is for you to decide how much weight to give to any evidence.

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1 **3.9 CREDIBILITY OF WITNESSES**

2 In deciding the facts in this case, you may have to decide which testimony to believe and
3 which testimony not to believe. You may believe everything a witness says, or part of it, or none
4 of it.

5 In considering the testimony of any witness, you may take into account:

6 (1) the witness's opportunity and ability to see or hear or know the things testified to;
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8 (2) the witness's memory;
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10 (3) the witness's manner while testifying;
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12 (4) the witness's interest in the outcome of the case, if any;
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14 (5) the witness's bias or prejudice, if any;
15 (6) whether other evidence contradicted the witness's testimony;
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17 (7) the reasonableness of the witness's testimony in light of all the evidence; and
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19 (8) any other factors that bear on believability.

20 The weight of the evidence as to a fact does not necessarily depend on the number of
21 witnesses who testify. What is important is how believable the witnesses were, and how much
22 weight you think their testimony deserves.

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1 **3.10 ACTIVITIES NOT CHARGED**

2 You are here only to determine whether the defendant is guilty or not guilty of the
3 charges in the indictment. The defendant is not on trial for any conduct or offense not charged in
the indictment.

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1 **3.11 SEPARATE CONSIDERATION OF MULTIPLE COUNTS—SINGLE**
2 **DEFENDANT**

3 A separate crime is charged against the defendant in each count. You must decide each
4 count separately. Your verdict on one count should not control your verdict on any other count.

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1 **3.17 POSSESSION—DEFINED**

2 A person has possession of something if the person knows of its presence and has
3 physical control of it, or knows of its presence and has the power and intention to control it.

4 [More than one person can be in possession of something if each knows of its presence
5 and has the power and intention to control it.]

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1 **3.19 JURY TO BE GUIDED BY OFFICIAL ENGLISH**
2 **TRANSLATION/INTERPRETATION**

3 The Cantonese language has been used during this trial.

4 The evidence you are to consider is only that provided through the official court
5 interpreters and translators. Although some of you may know the Cantonese language, it is
6 important that all jurors consider the same evidence. Therefore, you must accept the evidence
7 presented in the English interpretation and translation and disregard any different meaning.

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1 **4.1 STATEMENTS BY DEFENDANT**

2 You have heard testimony that the defendant made a statement. It is for you to decide (1)
3 whether the defendant made the statement, and (2) if so, how much weight to give to it. In
4 making those decisions, you should consider all the evidence about the statement, including the
circumstances under which the defendant may have made it.

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1 **4.3 OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT**

2 You have heard evidence that the defendant committed other [crimes] [wrongs] [acts] not
3 charged here. You may consider this evidence only for its bearing, if any, on the question of the
4 defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence
5 of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence
6 as evidence of guilt of the crime for which the defendant is now on trial.]
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1 **4.6 IMPEACHMENT, PRIOR CONVICTION OF DEFENDANT**

2 You have heard evidence that the defendant has previously been convicted of a crime.
3 You may consider that evidence only as it may affect the defendant's believability as a witness.
4 You may not consider a prior conviction as evidence of guilt of the crime for which the
defendant is now on trial.

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1 **4.8 IMPEACHMENT EVIDENCE—WITNESS**

2 You have heard evidence that *[name of witness]*, a witness, *[specify basis for*
3 *impeachment]*. You may consider this evidence in deciding whether or not to believe this witness
4 and how much weight to give to the testimony of this witness.

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1 **4.9 TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES—**
2 **IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

3 You have heard testimony from [*name of witness*], a witness who
4 [received immunity]. That testimony was given in exchange for a promise by the
5 government that [the witness will not be prosecuted] [the testimony will not be used in
any case against the witness]];

6 [received [benefits] [compensation] [favored treatment] from the government in
7 connection with this case];

8 [[admitted being] [was alleged to be] an accomplice to the crime charged. An accomplice
9 is one who voluntarily and intentionally joins with another person in committing a
crime];

10 [pledged guilty to a crime arising out of the same events for which the defendant is on
11 trial. This guilty plea is not evidence against the defendant, and you may consider it only
in determining this witness's believability].

12 For [this] [these] reason[s], in evaluating the testimony of [*name of witness*], you should
13 consider the extent to which or whether [his] [her] testimony may have been influenced by [this]
14 [any of these] factor[s]. In addition, you should examine the testimony of [*name of witness*] with
greater caution than that of other witnesses.

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1 **4.10 GOVERNMENT'S USE OF UNDERCOVER AGENTS AND INFORMANTS**

2 You have heard testimony from [an undercover agent] [an informant] who was involved
3 in the government's investigation in this case. Law enforcement officials may engage in stealth
4 and deception, such as the use of informants and undercover agents, in order to investigate
5 criminal activities. Undercover agents and informants may use false names and appearances and
6 assume the roles of members in criminal organizations.

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1 **4.11 EYEWITNESS IDENTIFICATION**

2 You have heard testimony of eyewitness identification. In deciding how much weight to
3 give to this testimony, you may consider the various factors mentioned in these instructions
concerning credibility of witnesses.

4 In addition to those factors, in evaluating eyewitness identification testimony, you may
5 also consider:

6 (1) the capacity and opportunity of the eyewitness to observe the offender based upon the
7 length of time for observation and the conditions at the time of observation, including
lighting and distance;

8 (2) whether the identification was the product of the eyewitness's own recollection or
9 was the result of subsequent influence or suggestiveness;

10 (3) any inconsistent identifications made by the eyewitness;

11 (4) the witness's familiarity with the subject identified;

12 (5) the strength of earlier and later identifications;

13 (6) lapses of time between the event and the identification[s]; and

14 (7) the totality of circumstances surrounding the eyewitness's identification.

1 **4.14 OPINION EVIDENCE, EXPERT WITNESS**

2 You have heard testimony from persons who, because of education or experience, were
3 permitted to state opinions and the reasons for their opinions.

4 Such opinion testimony should be judged like any other testimony. You may accept it or
5 reject it, and give it as much weight as you think it deserves, considering the witness's education
6 and experience, the reasons given for the opinion, and all the other evidence in the case.

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1 **4.16 CHARTS AND SUMMARIES IN EVIDENCE**

2 Certain charts and summaries have been admitted in evidence. Charts and summaries are
3 only as good as the underlying supporting material. You should, therefore, give them only such
4 weight as you think the underlying material deserves.

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1 **5.1 AIDING AND ABETTING**

2 A defendant may be found guilty of [*specify crime charged*], even if the defendant
3 personally did not commit the act or acts constituting the crime but aided and abetted in its
4 commission. To prove a defendant guilty of aiding and abetting, the government must prove
beyond a reasonable doubt:

5 First, [*specify crime charged*] was committed by someone;

6 Second, the defendant knowingly and intentionally aided, counseled, commanded,
7 induced or procured that person to commit each element of [*specify crime charged*]; and

8 Third, the defendant acted before the crime was completed. It is not enough that the
9 defendant merely associated with the person committing the crime, or unknowingly or
10 unintentionally did things that were helpful to that person, or was present at the scene of the
crime. The evidence must show beyond a reasonable doubt that the defendant acted with the
knowledge and intention of helping that person commit [*specify crime charged*].

11 The government is not required to prove precisely which defendant actually committed
12 the crime and which defendant aided and abetted.

1 **5.6 KNOWINGLY—DEFINED**

2 An act is done knowingly if the defendant is aware of the act and does not [act] [fail to
3 act] through ignorance, mistake, or accident. The government is not required to prove that the
4 defendant knew that [his] [her] acts or omissions were unlawful. You may consider evidence of
5 the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether
6 the defendant acted knowingly.

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1 **5.7 DELIBERATE IGNORANCE**

2 You may find that the defendant acted knowingly if you find beyond a reasonable doubt
3 that the defendant:

4 1. was aware of a high probability that [e.g., drugs were in the defendant's
5 automobile], and
6 2. deliberately avoided learning the truth

7 You may not find such knowledge, however, if you find that the defendant actually
8 believed that [e.g. no drugs were in the defendant's automobile], or if you find that the defendant
9 was simply careless.

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1 **7.1 DUTY TO DELIBERATE**

2 When you begin your deliberations, elect one member of the jury as your [presiding
3 juror] [foreperson] who will preside over the deliberations and speak for you here in court.

4 You will then discuss the case with your fellow jurors to reach agreement if you can do
5 so. Your verdict, whether guilty or not guilty, must be unanimous.

6 Each of you must decide the case for yourself, but you should do so only after you have
7 considered all the evidence, discussed it fully with the other jurors, and listened to the views of
8 your fellow jurors.

9 Do not be afraid to change your opinion if the discussion persuades you that you should.
10 But do not come to a decision simply because other jurors think it is right.

11 It is important that you attempt to reach a unanimous verdict but, of course, only if each
12 of you can do so after having made your own conscientious decision. Do not change an honest
13 belief about the weight and effect of the evidence simply to reach a verdict.

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1 **7.2 CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY**

2 Because you must base your verdict only on the evidence received in the case and on
3 these instructions, I remind you that you must not be exposed to any other information about the
4 case or to the issues it involves. Except for discussing the case with your fellow jurors during
your deliberations:

5 Do not communicate with anyone in any way and do not let anyone else communicate
6 with you in any way about the merits of the case or anything to do with it. This includes
7 discussing the case in person, in writing, by phone or electronic means, via email, text
8 messaging, or any Internet chat room, blog, website or other feature. This applies to
9 communicating with your family members, your employer, the media or press, and the
people involved in the trial. If you are asked or approached in any way about your jury
service or anything about this case, you must respond that you have been ordered not to
discuss the matter and to report the contact to the court.

10 Do not read, watch, or listen to any news or media accounts or commentary about the
11 case or anything to do with it; do not do any research, such as consulting dictionaries,
12 searching the Internet or using other reference materials; and do not make any
investigation or in any other way try to learn about the case on your own.

13 The law requires these restrictions to ensure the parties have a fair trial based on the same
14 evidence that each party has had an opportunity to address. A juror who violates these
15 restrictions jeopardizes the fairness of these proceedings[, and a mistrial could result that would
require the entire trial process to start over]. If any juror is exposed to any outside information,
please notify the court immediately.

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1 **7.3 USE OF NOTES**

2 Some of you have taken notes during the trial. Whether or not you took notes, you should
3 rely on your own memory of what was said. Notes are only to assist your memory. You should
4 not be overly influenced by your notes or those of your fellow jurors.

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1 **7.4 JURY CONSIDERATION OF PUNISHMENT**

2 The punishment provided by law for this crime is for the court to decide. You may not
3 consider punishment in deciding whether the government has proved its case against the
4 defendant beyond a reasonable doubt.

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1 **7.5 VERDICT FORM**

2 A verdict form has been prepared for you. [*Explain verdict form as needed.*] After you
3 have reached unanimous agreement on a verdict, your [presiding juror] [foreperson] should
4 complete the verdict form according to your deliberations, sign and date it, and advise the [clerk]
[bailiff] that you are ready to return to the courtroom.

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1 **7.6 COMMUNICATION WITH COURT**

2 If it becomes necessary during your deliberations to communicate with me, you may send
3 a note through the [clerk] [bailiff], signed by any one or more of you. No member of the jury
4 should ever attempt to communicate with me except by a signed writing, and I will respond to
5 the jury concerning the case only in writing or here in open court. If you send out a question, I
6 will consult with the lawyers before answering it, which may take some time. You may continue
7 your deliberations while waiting for the answer to any question. Remember that you are not to
8 tell anyone—including me—how the jury stands, numerically or otherwise, on any question
9 submitted to you, including the question of the guilt of the defendant, until after you have
10 reached a unanimous verdict or have been discharged.

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1 **8.20 RACKETEERING CONSPIRACY—ELEMENTS**

2 The defendant is charged in Count One of the indictment with conspiring to conduct the
3 affairs of an enterprise through a pattern of racketeering activity, in violation of Section 1962(d)
4 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge,
the government must prove each of the following elements beyond a reasonable doubt:

5 **First**, beginning on or about 2005, and ending on or about March 24, 2014, there was an
6 agreement between two or more persons to commit the crime of conducting the affairs of an
enterprise through a pattern of racketeering activity. The elements of that crime are:

7 One, there was an on-going enterprise with some sort of formal or informal
8 framework for carrying out its objectives consisting of a group of persons associated
9 together for a common purpose of engaging in a course of conduct;

10 Two, the defendant was employed by or associated with the enterprise;

11 Three, the defendant conducted or participated, directly or indirectly, in the
12 conduct of the affairs of the enterprise through a pattern of racketeering activity. To
13 conduct or participate means that the defendant had to be involved in the operation or
management of the enterprise; and

14 Four, the enterprise engaged in or its activities in some way affected commerce
15 between one state and another state, or between the United States and a foreign country;
and

16 **Second**, the defendant became a member of the conspiracy knowing of at least one of its
17 objects and intending to help accomplish it.

18 A conspiracy is a kind of criminal partnership—an agreement of two or more persons to
19 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;
20 it does not matter whether the crime agreed upon was committed. A conspiracy to commit a
crime does not require completion of the intended underlying offense.

21 For a conspiracy to have existed, it is not necessary that the conspirators made a formal
22 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that
23 they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped
one another. You must find that there was a plan to commit at least one of the crimes alleged in
the indictment as an object of the conspiracy with all of you agreeing as to the particular crime
which the conspirators agreed to commit.

25 One becomes a member of a conspiracy by willfully participating in the unlawful plan
26 with the intent to advance or further some object or purpose of the conspiracy, even though the
27 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,

1 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
2 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
3 does not become a conspirator merely by associating with one or more persons who are
4 conspirators, nor merely by knowing that a conspiracy exists.

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1 **8.152 RACKETEERING ENTERPRISE—ENTERPRISE AFFECTING INTERSTATE**
2 **COMMERCE—DEFINED (18 U.S.C. § 1959)**

3 With respect to the term “enterprise” that was engaged in or had an effect on interstate
4 commerce, an enterprise is a group of people who have associated together for a common
5 purpose of engaging in a course of conduct over a period of time. This group of people, in
6 addition to having a common purpose, must have an ongoing organization, either formal or
7 informal. The personnel of the enterprise, however, may change and need not be associated with
8 the enterprise for the entire period alleged in the indictment. This group of people does not have
9 to be a legally recognized entity, such as a partnership or corporation. This group may be
10 organized for a legitimate and lawful purpose, or it may be organized for an unlawful purpose.
11 The name of the organization itself is not an element of the offense and does not have to be
12 proved.

13 To demonstrate an enterprise, the government must show a group of people (1) associated
14 for a common purpose of engaging in a course of conduct; (2) that the association of these
15 people was an ongoing formal or informal organization, and (3) the group was engaged in or had
16 an effect upon interstate or foreign commerce. The government need not prove that the enterprise
17 had any particular organizational structure.

18 Interstate commerce includes the movement of goods, services, money and individuals
19 between states. These goods can be legal or illegal. Only a minimal effect on commerce is
20 required and the effect need only be probable or potential, not actual. It is not necessary to prove
21 that the defendant’s own acts affected interstate commerce as long as the enterprise’s acts had
22 such effect.

1 **8.153 RACKETEERING ACTIVITY—DEFINED (18 U.S.C. § 1959)**

2 “Racketeering activity” means the commission of certain crimes. These include dealing
3 in controlled substances, collection of unlawful debt through extortion, money laundering,
4 interstate sale of stolen property and receipt of stolen property, dealing in contraband cigarettes,
murder for hire, murder, and conspiracy to commit murder.

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1 **8.157 RICO—PATTERN OF RACKETEERING ACTIVITY (18 U.S.C. § 1961(5))**

2 To establish a pattern of racketeering activity, the government must prove each of the
3 following beyond a reasonable doubt:

4 First, at least two acts of racketeering were committed within a period of ten years;

5 Second, the acts of racketeering had a relationship to each other which posed a threat of
6 continued criminal activity; and

7 Third, the acts of racketeering embraced the same or similar purposes, results,
8 participants, victims, or methods of commission, or were otherwise interrelated by distinguishing
characteristics.

9 Sporadic, widely separated, or isolated criminal acts do not form a pattern of racketeering
10 activity.

11 Two racketeering acts are not necessarily enough to establish a pattern of racketeering
activity.

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1 **8.23 CONSPIRACY - KNOWLEDGE OF AND ASSOCIATION WITH OTHER
2 CONSPIRATORS**

3 A conspiracy may continue for a long period of time and may include the performance of
4 many transactions. It is not necessary that all members of the conspiracy join it at the same time,
5 and one may become a member of a conspiracy without full knowledge of all the details of the
6 unlawful scheme or the names, identities, or locations of all of the other members.

7 Even though a defendant did not directly conspire with other conspirators in the overall
8 scheme, the defendant has, in effect, agreed to participate in the conspiracy if it is proved beyond
9 a reasonable doubt that:

10 **First**, the defendant directly conspired with one or more conspirators to carry out at least
11 one of the objects of the conspiracy,

12 **Second**, the defendant knew or had reason to know that other conspirators were involved
13 with those with whom the defendant directly conspired, and

14 **Third**, the defendant had reason to believe that whatever benefits the defendant might get
15 from the conspiracy were probably dependent upon the success of the entire venture.

16 It is no defense that a person's participation in a conspiracy was minor or for a short
17 period of time.

18 Not all of the conspirators must be named or charged in the indictment. If you find that
19 the defendant entered into a criminal agreement with one or more persons, you may find him
20 guilty of conspiracy even if the person with whom you find he conspired is not charged or named
21 in the indictment. A single conspiracy can be established even though it took place during a long
22 period of time during which new members joined and old members dropped out.

23 Citation: 8.23; 8.23 Comment

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1 **8.25 CONSPIRACY - LIABILITY FOR SUBSTANTIVE OFFENSE COMMITTED BY**
2 **COCONSPIRATOR (PINKERTON CHARGE)**

3 Each member of the conspiracy is responsible for the actions of the other conspirators
4 performed during the course and in furtherance of the conspiracy. If one member of a conspiracy
5 commits a crime in furtherance of a conspiracy, the other members have also, under the law,
6 committed that crime.

7 Therefore, you may find a defendant guilty of the substantive offenses charged in the
8 Indictment if the government has proved each of the following elements beyond a reasonable
9 doubt:

- 10 1. a person committed the substantive crime charged in the Indictment;
- 11 2. the person was a member of a conspiracy charged in the Indictment;
- 12 3. the person committed the substantive crime charged in furtherance of a charged
13 conspiracy;
- 14 4. the defendant was a member of the same conspiracy at the time the substantive
15 crime was committed; and
- 16 5. the substantive offense charged fell within the scope of the unlawful agreement
17 and could reasonably have been foreseen to be a necessary or natural
18 consequence of the unlawful agreement.

1 **8.151 VIOLENT CRIME IN AID OF RACKETEERING ENTERPRISE (18 U.S.C. § 1959)**

2 The defendant is charged in Count Two of the indictment with committing a crime of
3 violence, specifically murder in aid of a racketeering enterprise in violation of Section 1959 of
4 Title 18 of the United States Code. In order for the defendant to be found guilty of that charge,
the government must prove each of the following elements beyond a reasonable doubt:

5 **First**, on or about the time period described in Count Two, an enterprise affecting
interstate commerce existed;

6 **Second**, the enterprise engaged in racketeering activity;

7 **Third**, the defendant committed the following crime of violence: murder, as defined in
California Penal Code Section 187 and 189, the elements of that offense are:

8 One, the defendant committed an act that caused the death of another person; and

9 Two, when the defendant acted, he had a state of mind called malice aforethought.
10 There are two kinds of malice aforethought, express malice and implied malice. Proof of
11 either is sufficient to establish the state of mind required for murder.

12 The defendant acted with express malice if he unlawfully intended to kill.

13 The defendant acted with implied malice if he committed an act; the natural and
14 probable consequences of the act were dangerous to human life; at the time he acted he
15 knew his act was dangerous to human life; and he deliberately acted with conscious
disregard for human life.

16 Malice aforethought does not require hatred or ill will toward the victim. It is a
17 mental state that must be formed before the act that causes death is committed. It does
18 not require deliberation or the passage of any particular period of time.

19 An act causes death if the death is the direct, natural, and probable consequence of
20 the act and the death would not have happened without the act. A natural and probable
21 consequence is one that a reasonable person would know is likely to happen if nothing
unusual intervenes. In deciding whether a consequence is natural and probable, consider
all of the circumstances established by the evidence. There may be more than one cause
of death. An act causes death only if it is a substantial factor in causing the death. A
substantial factor is more than a trivial or remote factor. However, it does not need to be
the only factor that causes the death.

22 **Fourth**, that the defendant's purpose in committing murder was to gain entrance to, or to
23 maintain, or to increase his position in the enterprise.

24 Authority: CALCRIM 520: Judicial Council of California Jury Instructions, updated May of
25 2015, "First or Second Degree Murder with Malice Aforethought (Pen. Code, § 187)

1 **8.152 RACKETEERING ENTERPRISE—ENTERPRISE AFFECTING INTERSTATE**
2 **COMMERCE—DEFINED (18 U.S.C. § 1959)**

3 With respect to the first element in Instruction 8.151, the government must prove that an
4 “enterprise” existed that was engaged in or had an effect on interstate commerce. An enterprise is
5 a group of people who have associated together for a common purpose of engaging in a course of
6 conduct over a period of time. This group of people, in addition to having a common purpose,
7 must have an ongoing organization, either formal or informal. The personnel of the enterprise,
8 however, may change and need not be associated with the enterprise for the entire period alleged
9 in the indictment. This group of people does not have to be a legally recognized entity, such as a
10 partnership or corporation. This group may be organized for a legitimate and lawful purpose, or
11 it may be organized for an unlawful purpose. The name of the organization itself is not an
12 element of the offense and does not have to be proved.

13 Therefore, the government must prove beyond a reasonable doubt that this was a group of
14 people (1) associated for a common purpose of engaging in a course of conduct; (2) that the
15 association of these people was an ongoing formal or informal organization, and (3) the group
16 was engaged in or had an effect upon interstate or foreign commerce. The government need not
17 prove that the enterprise had any particular organizational structure.

18 Interstate commerce includes the movement of goods, services, money and individuals
19 between states. These goods can be legal or illegal. Only a minimal effect on commerce is
20 required and the effect need only be probable or potential, not actual. It is not necessary to prove
21 that the defendant’s own acts affected interstate commerce as long as the enterprise’s acts had
22 such effect.

1 **8.153 RACKETEERING ACTIVITY—DEFINED (18 U.S.C. § 1959)**

2 With respect to the second element in Instruction 8.151, the government must prove that
3 the enterprise was engaged in racketeering activity. “Racketeering activity” means the
4 commission of certain crimes. These include dealing in controlled substances, collection of
5 unlawful debt through extortion, money laundering, interstate sale of stolen property and receipt
6 of stolen property, dealing in contraband cigarettes, murder for hire, murder, and conspiracy to
7 commit murder.

8 The government must prove beyond a reasonable doubt that the enterprise was engaged
9 in at least one of the crimes named above.

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1 **8.157 RICO—PATTERN OF RACKETEERING ACTIVITY (18 U.S.C. § 1961(5))**

2 To establish a pattern of racketeering activity, the government must prove each of the
3 following beyond a reasonable doubt:

4 First, at least two acts of racketeering were committed within a period of ten years;

5 Second, the acts of racketeering had a relationship to each other which posed a threat of
6 continued criminal activity; and

7 Third, the acts of racketeering embraced the same or similar purposes, results,
8 participants, victims, or methods of commission, or were otherwise interrelated by distinguishing
characteristics.

9 Sporadic, widely separated, or isolated criminal acts do not form a pattern of racketeering
10 activity.

11 Two racketeering acts are not necessarily enough to establish a pattern of racketeering
activity.

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1 **8.154 RACKETEERING ENTERPRISE—PROOF OF PURPOSE (18 U.S.C. § 1959)**

2 With respect to the fourth element in Instruction 8.151, the government must prove
3 beyond a reasonable doubt that the defendant's purpose was to gain entrance to, or to maintain,
4 or to increase his position in the enterprise.

5 It is not necessary for the government to prove that this motive was the sole purpose, or
6 even the primary purpose of the defendant in committing the charged crime. You need only find
7 that enhancing his status in the enterprise was a substantial purpose of the defendant or that he
8 committed the charged crime as an integral aspect of membership in the enterprise.

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10 In determining the defendant's purpose in committing the alleged crime, you must
11 determine what he had in mind. Since you cannot look into a person's mind, you have to
12 determine purpose by considering all the facts and circumstances before you.
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1 **8.151 VIOLENT CRIME IN AID OF RACKETEERING ENTERPRISE (18 U.S.C. § 1959)**

2 The defendant is charged in Count Three of the indictment with conspiracy to commit a
3 crime of violence, specifically, murder in aid of a racketeering enterprise in violation of Section
4 1959 of Title 18 of the United States Code. In order for the defendant to be found guilty of that
charge, the government must prove each of the following elements beyond a reasonable doubt:

5 **First**, on or about the time period described in Count Three, an enterprise affecting
interstate commerce existed;

6 **Second**, the enterprise engaged in racketeering activity;

7 **Third**, the defendant conspired to commit the following crime of violence: murder, as
8 defined in California Penal Code, Sections 182 and 187, the elements of conspiracy to commit
9 murder are that:

10 One, the defendant intended to agree and did agree with one or more other people
11 to intentionally and unlawfully kill;

12 Two, at the time of the agreement, the defendant and one or more other
13 conspirators intended that one of them would intentionally and unlawfully kill; and

14 Three, one of the conspirators committed an overt act to accomplish the killing;

15 **Fourth**, that the defendant's purpose in conspiring to commit murder was to gain
entrance to, or to maintain, or to increase his position in the enterprise.

16 The definitions of the elements above are the same as for Count Two, which I have
17 already instructed you on.

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19 Authority: For the elements of Conspiracy to Murder, CALCRIM 563: Judicial Council of
California Jury Instructions, updated May of 2015, "Conspiracy to Commit Murder (Pen. Code,
20 § 182)

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1 **74.4 MONEY LAUNDERING STING 18 U.S.C. § 1956(a)(3)(A) or (a)(3)(B)**

2 The defendant is charged in Counts 4 through 133 of the indictment with conducting a
3 financial transaction to promote or conceal unlawful activity in violation of Section
4 1956(a)(3)(A) and (B) of Title 18 of the United States Code. In order for the defendant to be
5 found guilty of that charge, the government must prove each of the following elements beyond a
6 reasonable doubt:

7 **First**, the defendant knowingly conducted a financial transaction;

8 **Second**, the transaction involved property that a law-enforcement officer represented as
9 coming from a specified unlawful activity; and

10 **Third**, the defendant engaged in the transaction with the intent to promote the carrying
11 on of specified unlawful activity.

12 or

13 **Third**, the defendant engaged in the transaction with the intent to conceal or disguise the
14 nature, location, source, ownership, or control of property believed to be the proceeds of
15 specified unlawful activity.

16 The Government alleges that the property involved in the financial transaction was
17 represented as coming from narcotics trafficking and illegal gambling operations. For purposes
18 of this case, narcotics trafficking and illegal gambling operations are a kind of specified unlawful
19 activity.

20 The government also alleges that the Defendant was involved in the the transaction with
21 the intent to promote the carrying on of and to conceal or disguise the nature, location, source,
22 ownership, or control of property believed to be the proceeds of narcotics trafficking and illegal
23 gambling operations, which I remind you is a kind of specified unlawful activity.

24 A “representation” is any communication made by a law-enforcement officer or by
25 another person directed by, or with the approval of, a federal official authorized to investigate or
26 prosecute violations of this law.

27 To “conduct” a transaction means to start or finish a transaction or to participate in a
28 transaction at any point.

29 A “transaction” means a purchase, sale, loan, promise, gift, transfer, delivery, or other
30 disposition of money or property. A transaction with a financial institution also includes a
31 deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit,
32 use of a safe deposit box, or purchase or sale of any stock, bond, certificate of deposit, or other
33 monetary instrument.

34 A “financial transaction” means—

1 a transaction that in any way or to any degree affects interstate or foreign commerce by sending
2 or moving money by wire or other means; or

3 a transaction that in any way or to any degree affects interstate or foreign commerce by involving
4 one or more "monetary instruments." the phrase "monetary instruments" includes coins or
5 currency of any country, travelers or personal checks, bank checks or money orders, or
6 investment securities or negotiable instruments in a form that allows ownership to transfer on
7 delivery; or

8 a transaction involving the use of a financial institution that is involved in interstate or foreign
9 commerce, or whose activities affect interstate or foreign commerce, in any way or degree. The
10 phrase "financial institution": includes [give appropriate reference from [31 U.S.C. § 5312\(a\)\(2\)](#)
11 or the regulations promulgated under it].

12 The term "with the intent to promote the carrying on of specified unlawful activity"
13 means that the defendant must have conducted the financial transaction for the purpose of
14 making easier or helping to bring about the specified unlawful activity.

15 Authority: Pattern Crim. Jury Instr. 11th Cir. OI 74.4 (2010); Federal Jury Practice And
16 Instructions; Pattern Jury Instructions: Eleventh Circuit, Criminal Cases With Annotations and
17 Comments; Prepared by Committee on Pattern Jury Instructions of the Judicial Council of the
18 Eleventh Circuit.

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1 **8.20, 8.189, 8.190 CONSPIRACY TO TRAFFIC IN STOLEN PROPERTY**

2 The defendant is charged in Count 134 of the indictment with conspiring to commit
3 interstate transportation of stolen property, or to commit receipt or sale of stolen property in
4 interstate commerce, or both, in violation of Section 371 of Title 18 of the United States Code. In
5 order for the defendant to be found guilty of that charge, the government must prove each of the
6 following elements beyond a reasonable doubt:

7 **First**, beginning on or about December 13, 2011, through on or about March 13, 2012,
8 there was an agreement between two or more persons to commit the crimes of interstate
9 transportation of stolen property, or receipt or sale of stolen property in interstate commerce, or
10 both of these crimes. The elements of each of these crimes are as follows:

11 Interstate transportation of stolen property

12 One, the defendant transported stolen property between one state and another or a
13 foreign nation and the United States;

14 Two, at the time the property crossed the state or country border, the defendant
15 knew it was stolen;

16 Three, the defendant intended to deprive the owner of the ownership of the
17 property temporarily or permanently; and

18 Four, the money or property was of the value of \$5,000 or more.

19 The government need not prove who stole the property.

20 Sale or receipt of stolen property in interstate commerce

21 One, the defendant received, possessed, sold, or disposed of property that had
22 crossed a state or United States boundary after having been stolen;

23 Two, at the time defendant did so he knew that the property had been stolen; and

24 Three, the property was of a value of \$5,000 or more.

25 The government need not prove defendant knew the property was in interstate
26 commerce; it need only prove defendant knew it was stolen.

27 **Second**, the defendant became a member of the conspiracy knowing of at least one of its
28 objects and intending to help accomplish it; and

29 **Third**, one of the members of the conspiracy performed at least one overt act for the
30 purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you
31 find was committed.

1 A conspiracy is a kind of criminal partnership—an agreement of two or more persons to
2 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;
3 it does not matter whether the crime agreed upon was committed. A conspiracy to commit a
4 crime does not require completion of the intended underlying offense.

5 For a conspiracy to have existed, it is not necessary that the conspirators made a formal
6 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that
7 they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped
8 one another. You must find that there was a plan to commit at least one of the crimes alleged in
9 the indictment as an object of the conspiracy with all of you agreeing as to the particular crime
10 which the conspirators agreed to commit.

11 One becomes a member of a conspiracy by willfully participating in the unlawful plan
12 with the intent to advance or further some object or purpose of the conspiracy, even though the
13 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
14 willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,
15 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
16 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
17 does not become a conspirator merely by associating with one or more persons who are
18 conspirators, nor merely by knowing that a conspiracy exists.

19 An overt act does not itself have to be unlawful. A lawful act may be an element of a
20 conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
21 required to prove that the defendant personally did one of the overt acts.

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8.20, 8.190 CONSPIRACY TO TRAFFIC IN STOLEN PROPERTY

The defendant is charged in Count 135 of the indictment with conspiring to commit the crime of receipt or sale of stolen property in interstate commerce, in violation of Section 371 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about June 20, 2012, through on or about September 19, 2012, there was an agreement between two or more persons to commit the crime of receipt or sale of stolen property in interstate commerce. The elements of that crime are:

Sale or receipt of stolen property in interstate commerce

One, the defendant received, possessed, sold, or disposed of property that had crossed a state or United States boundary after having been stolen;

Two, at the time defendant did so he knew that the property had been stolen; and

Three, the property was of a value of \$5,000 or more.

The government need not prove defendant knew the property was in interstate commerce; it need only prove defendant knew it was stolen.

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed. A conspiracy to commit a crime does not require completion of the intended underlying offense.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,

1 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
2 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
3 does not become a conspirator merely by associating with one or more persons who are
conspirators, nor merely by knowing that a conspiracy exists.

4 An overt act does not itself have to be unlawful. A lawful act may be an element of a
conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
5 required to prove that the defendant personally did one of the overt acts.

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1 **8.20, 8.190 CONSPIRACY TO TRAFFIC IN STOLEN PROPERTY AND**
2 **CONTRABAND CIGARETTES**

3 The defendant is charged in Counts 136 through 138 of the indictment with conspiring to
4 commit the crime of trafficking in contraband cigarettes, or to commit the crime of receipt or
5 sale of stolen property in interstate commerce, or both, in violation of Section 371 of Title 18 of
6 the United States Code. In order for the defendant to be found guilty of that charge, the
7 government must prove each of the following elements beyond a reasonable doubt:

8 **First**, during the time period described in the Indictment, there was an agreement
9 between two or more persons to commit the crimes of trafficking in contraband cigarettes, or
10 receipt or sale of stolen property in interstate commerce, or both. The elements of those crimes
11 are as follows:

12 Trafficking in contraband cigarettes

13 One, that the defendant knowingly received, possessed, transported, sold or
14 distributed a quantity of contraband cigarettes in excess of 10,000 cigarettes.

15 Two, that the cigarettes bore no evidence of the payment of applicable state or
16 local sales taxes.

17 The term "contraband cigarette" means a quantity in excess of 10,000 cigarettes,
18 which bear no evidence of the payment of applicable State or local cigarette taxes in the
19 State or locality where such cigarettes are found, if the State or local government requires
20 a stamp, impression, or other indication to be placed on packages or other containers of
21 cigarettes to evidence payment of cigarette taxes.

22 You are further instructed as a matter of law that the State of New York, and the
23 City of New York require a stamp, impression, or other indication to be placed on
24 packages or other containers of cigarettes to evidence payment of cigarette taxes.

25 The government is not required to prove that the defendant was aware of the State
26 or local taxation requirements, only that the defendant knew that the cigarettes bore no
27 indication of payment of State or local taxes.

28 Sale or receipt of stolen property in interstate commerce

29 One, the defendant received, possessed, sold, or disposed of property that had
30 crossed a state or United States boundary after having been stolen;

31 Two, at the time defendant did so he knew that the property had been stolen; and

32 Three, the property was of a value of \$5,000 or more.

1 The government need not prove defendant knew the property was in interstate
2 commerce; it need only prove defendant knew it was stolen.

3 **Second**, the defendant became a member of the conspiracy knowing of at least one of its
4 objects and intending to help accomplish it; and

5 **Third**, one of the members of the conspiracy performed at least one overt act for the
6 purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you
7 find was committed.

8 A conspiracy is a kind of criminal partnership—an agreement of two or more persons to
9 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;
10 it does not matter whether the crime agreed upon was committed. A conspiracy to commit a
11 crime does not require completion of the intended underlying offense.

12 For a conspiracy to have existed, it is not necessary that the conspirators made a formal
13 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that
14 they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped
15 one another. You must find that there was a plan to commit at least one of the crimes alleged in
16 the indictment as an object of the conspiracy with all of you agreeing as to the particular crime
17 which the conspirators agreed to commit.

18 One becomes a member of a conspiracy by willfully participating in the unlawful plan
19 with the intent to advance or further some object or purpose of the conspiracy, even though the
20 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
21 willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,
22 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
23 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
24 does not become a conspirator merely by associating with one or more persons who are
25 conspirators, nor merely by knowing that a conspiracy exists.

26 An overt act does not itself have to be unlawful. A lawful act may be an element of a
27 conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
28 required to prove that the defendant personally did one of the overt acts.

29 Citation: For elements of 18 U.S.C. § 2342(a), *see United States v. Elshenawy*, 801 F.2d 856 (6th
30 Cir. 1986); *United States v. Nguyen*, 758 F.3d 1024 (8th Cir. 2014); *United States v. Zakharyan*,
31 Crim. No. WDQ-13-0662 (D.Md. 2013).

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2 **8.146, 8.147 FINANCIAL TRANSACTION TO PROMOTE UNLAWFUL ACTIVITY (18**
U.S.C. § 1956(a)(1)(A)); **MONEY LAUNDERING (18 U.S.C. § 1956(a)(1)(B))**

3 The defendant is charged in Counts 139 through 162 of the indictment with conducting a
4 financial transaction to promote narcotics trafficking and with laundering money in violation of
5 Section 1956(a)(1)(A) and (a)(1)(B) of Title 18 of the United States Code. In order for the
6 defendant to be found guilty of that charge, the government must prove each of the following
elements beyond a reasonable doubt:

7 **First**, the defendant conducted a financial transaction involving property that represented
the proceeds of narcotics trafficking;

8 **Second**, the defendant knew that the property represented the proceeds of narcotics
9 trafficking; and

10 **Third**, the defendant acted with the intent to promote the carrying on of narcotics
11 trafficking;

12 or

13 **Third**, the defendant knew that the transaction was designed in whole or in part to
conceal or disguise the nature, location, source, ownership, or control of the proceeds of
14 narcotics trafficking.

15 A financial transaction is a transaction involving the movement of funds by wire or other
16 means that, one or more monetary instruments that, the use of a financial institution that is
17 engaged in, or the activities of which, affects interstate or foreign commerce in any way.

18 Proceeds means any property derived from, or obtained or retained, directly or indirectly,
through some form of unlawful activity, including the gross receipts of such activity.

19 With respect to the second element of the instruction, the government must prove that the
20 defendant knew that the property represented the proceeds of the specific prior, separate criminal
21 activity but need not prove that the defendant knew that the act of laundering the proceeds was
unlawful.

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